IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 16, 2006

STATE OF TENNESSEE v. JOHN VERNON CAMPBELL

Appeal from the Carter County Criminal Court
No. S16565 Lynn W. Brown, Judge

No. E2005-01252-CCA-R3-CD - Filed July 20, 2006

The Defendant, John Vernon Campbell, was convicted of first degree murder, and he received a life sentence in the Tennessee Department of Correction. The Defendant now appeals, contending that: (1) insufficient evidence was presented to support his conviction; (2) the prosecutor engaged in misconduct; (3) the trial court's failure to accompany the jury to the crime scene prejudiced him; (4) the State was improperly allowed to impeach him with a prior kidnapping conviction; and (5) he is entitled to a new trial due to the cumulative effect of the trial court's errors. Finding no reversible error, we affirm the judgment of the trial court.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Robert Y. Oaks, Elizabethton, Tennessee, for the appellant, John Vernon Campbell.

Paul G. Summers, Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Joe C. Crumley, Jr., District Attorney General; and Kenneth C. Baldwin, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
I. Facts

This case arises from the Defendant's conviction for first degree murder. At the Defendant's trial, the following evidence was presented: Angela Sanders, the mother of the victim, Terri Abbott, testified that the victim had lived with her since November of 2002. Sanders recalled that on the evening of February 13, 2003, the victim asked for a ride to South Roan Street and that the victim did not have any visible injuries at that time. Sanders said that she told the victim that she could not drive her anywhere immediately, and the victim left the house at around 7:20 or 7:25 p.m. saying that she was going to be late. Sanders identified a black Talbot's turtleneck, a pair of blue jeans, a belt, belt buckle, purse, and black leather jacket that she said that the victim was wearing when she left

the house. She also identified a pair of shoes, a bra, and underwear that belonged to the victim, but she was unsure of whether the victim was wearing them on that day. Sanders testified that she did not think that her daughter had ever been to an area called "the Blue Hole", which was where her daughter's body was later discovered.

Susan McKee, who lived in the house directly behind the victim's home, testified that on February 13, 2003, the victim came to her house and asked her for a ride and that McKee drove the victim "through South Roan Street," and dropped her off at a house on West Walnut Street at around 7:30 or 8:00 p.m. McKee did not know who lived at the house, and the victim told her that "a friend" lived there. McKee described the victim as "very upset" and said that the victim was crying.

Robert Michael Young testified that on the evening of February 13, 2003, he lived at 102 West Walnut Street and that the victim, who he had met through friends, came to his house to change her clothes. Young testified that the victim asked him to take her to a club called "Nashville Sound," which he did. He said that she also asked him to pick her up at Nashville Sound at 1:00 a.m. Young stated that, when he attempted to pick the victim up, she was not in front of the club as she had specified. He said that he had told the victim that he would not "go in looking for her," so he drove back to his home. Young recalled that the victim left her purse at his house, and he later gave the purse to the police. On cross-examination, Young admitted that he had been seeing the victim off and on for about two months. Further, he did not recall whether he had previously said that the victim came to his house that evening because she wanted money to buy drugs.

Mindy Gibbs testified that she knew the Defendant because she worked with him and had dated him briefly. She stated that, around February of 2003, she saw the Defendant at Nashville Sound, and he said "hi" to her. She recalled that, at some later point during the evening, the Defendant was with a woman. Gibbs described the woman as "petite" with a "nice smile" and straight, white teeth. Gibbs could not, however, identify a picture of the victim as being of the woman she saw with the Defendant. She said that she saw the two together talking for about ten minutes sometime between 10:30 p.m. and 1:00 a.m., but she did not see them arrive or leave the club. On cross-examination, Gibbs testified that the first time she saw the Defendant was at 11:30 p.m. or 12:00 a.m. Further, she said that the Defendant and the victim seemed to be getting along while they were talking.

Daniel James Thomas testified that in March of 2003 he and his father, Timothy Thomas, were fishing in the Blue Hole area and found the body of a dead woman lying in the stream. Timothy Thomas testified that, after his son discovered the victim's body, he and his son traveled to the nearest home and dialed 911. On cross-examination, Thomas said that he had been to the stream many times before, and he recognized a picture of a "drop-off" from the stream bank to the stream bed. He said that the area was difficult to navigate, and, while he had not been there in the dark, he imagined it would be even more difficult to navigate then. On redirect examination, Thomas said that the path leading to the stream was "well trodden" and would not be that difficult to follow in the dark.

Randy Bowers, an investigator with the Carter County Sheriff's Department, testified that he was involved in the investigation of a body found in the Blue Hole area on March 8, 2003. He said that, when he was called to the scene that night, he photographed the body, which was about forty yards off of the highway. The investigator turned the body over to the rescue squad, and they transported it to the morgue. He said that, in February of 2003, the Stoney Creek Highway was under construction, and the sign indicating the location of the Blue Hole had been removed. Additionally, the entrance had changed location, and it had been moved approximately one hundred yards from where it was previously located, and there was no sign at the new entrance. On cross-examination, the investigator said that he did not make a drawing or a sketch of the area, and he identified a diagram of the area where the body was found. He agreed that there was a drop-off of approximately fifteen feet from the edge of the bank to the creek and that there was a trail from the parking area down to the creek.

Dr. Mona Gretal Case Harlan Stephens, a forensic pathologist, employed by East Tennessee State University to do autopsies for northeastern Tennessee, testified that she performed the victim's autopsy. Dr. Stephens testified that when she received the victim's body, the victim was wearing a long sleeve, black, Talbot's mock turtleneck, which was completely removed from the victim's body, except the right arm was still in its sleeve. The victim also wore a pair of jeans that were unzipped, pulled down slightly, and had a rip at the left crotch seam. The pants were held up with an unbuckled belt that had a rhinestone belt buckle. Additionally, the victim was wearing black shoes, a bra, which was partially torn loose on the back, and some jewelry. The victim's clothing was wet, and she had leaves, mud, sand, twigs, grass, bits of moss, and a few small beatles on her body and clothes. Dr. Stephens testified that the presence of sediment in the victim's pockets indicated that at some point the body was at least partially submerged in water.

Dr. Stephens stated that the autopsy revealed that the victim had brain injury and swelling due to multiple blows to the head. The victim had additional, non-lethal injuries to her arms, torso, scalp, face, shins, and legs. It was Dr. Stephens's opinion that some of the injuries could have been caused by blows to the victim, while others could have been caused by the victim falling and hitting things. Some of the victim's facial and head injuries were inconsistent with the victim striking her head against something, and the doctor opined that these injuries were the result of blows being inflicted upon the victim. Furthermore, many of the injuries to the victim's arms did not comport with the idea of the victim bracing herself for impact against an object; rather, they were more likely to have occurred during a struggle. The victim also had injuries to her legs, specifically to her knees and ankles, that were consistent with occurring during a struggle. Dr. Stephens calculated there to be somewhere between twenty and thirty-two blows to the head and torso, and fourteen to the lower extremities, with a minimum of twenty of those injuries to the arms and head being consistent with a defensive posture and being stuck by an object. The doctor said that there were a minimum of five blows to the face and head. According to Dr. Stephens's testimony, very few, if any, of the documented injuries could have occurred after the victim's death. The doctor described several of the injuries in detail.

Dr. Stephens stated that the cause of death was a combination of blows to the head that led to brain swelling. The doctor said that there was evidence that the victim breathed for a little while after her brain began to swell because vomit was found in the victim's lungs. The doctor stated that the victim could have slipped into a weakened state of confusion or unconsciousness. The victim's intracranial swelling led to vomiting, and due to the victim's inability to control what was happening to her, she breathed the vomit back in instead of expelling it out. The victim could have survived her injuries for a period of anywhere from ten minutes to two hours. Dr. Stephens stated that:

> I think that during part of this time, she was able to at least personally defend herself with her arms. If she was being struck on the right side, she may have had her right [hand] and even possibly her arm in the way part of the time. She also then began to lose control of being able to prevent things, and that's when she began to throw up and aspirate and also have problems with not being able to keep her arms up and keep herself from being struck. And certainly some of these [wounds] down here on her legs could have been an attempt to ward off blows as well or possibly even knee somebody or something like that, but I can't prove or disprove that.

Dr. Stephens was then presented with a "scissors jack"; an object used to lift a car when changing a tire. She stated that the jack had several qualities about it that made it consistent with the object used to inflict the injuries suffered by the victim. The doctor said that the jack could have caused any of the wounds that had a linear edge, such as two of the wounds to the head. In describing the amount of force used to produce the victim's injures, the doctor stated:

> If I wielded the jack, I could with maximum effort cause this much injury. It's not something that required somebody that was a weight lifter to do, but it would require major strength and effort . . . to produce these injuries. I would have to either be angry or trying really hard to produce them or I probably wouldn't succeed. And I'm strong for my age and size.

On cross-examination, Dr. Stephens stated that the victim's body was brought to the morgue shortly after midnight on March 8, 2003. Dr. Stephens acknowledged that she was not afforded the opportunity to visit the scene where the body was discovered, but she "always like[s] to go to the scene." She also explained that she could not say for certain how the victim's injuries were inflicted or if they were defensive wounds, but she felt that it was more likely that they occurred from warding off blows than from falling. The doctor said that she found no evidence that the victim was strangled or restrained, and, while there was evidence of semen present on the victim, there was no evidence of injuries associated with sexual penetration. Dr. Stephens also noted that while the scissors jack could have been used as the murder weapon this was only one explanation and could not be unequivocally proven. The doctor's testimony also clarified that the injuries to the victim's legs could have been the result of falling down or against something.

Dr. Stephens recalled that the victim's blood alcohol level was .046, her urine alcohol level was .075, and her vitreous alcohol level was .022. Additionally, cocaine metabolite was found in

the victim's blood, and cannabinoids, the active drug in marijuana, were found in the victim's urine. The doctor opined that the cocaine would have affected the victim at the time of her death; however, several other drugs that were present in her system would not. Specifically, acetaminophen, which is in Tylenol, ephedrine or pseudoephedrine, which is an antihistamine used in drugs such as Sudafed, and phenothiazine metabolite, which is found in antidepressants, were all found in the victim's urine. Dr. Stephens also testified that the lacerations to the victim's scalp would have bled "massively," but her lying in a wet area, the creek bed, would have allowed water to clean away the blood.

On redirect-examination, Dr. Stephens summed up her testimony by stating that, "in my opinion, this is a beating much more likely than injuries from a terrified female running through the woods." On re-cross examination, she testified that she could not totally exclude the possibility of the victim stumbling down a rocky incline and becoming injured in the process. She said, however, that the victim "would almost have had to have landed in a hole of rocks that had all linear jagged edges with enough of an edge to it to cause that configuration of injuries."

David Wayne Campbell, the Defendant's brother, testified that he saw the Defendant on the Defendant's way out of town for work on the morning of February 14, 2003, and the Defendant's emotional state appeared normal. Campbell stated that the Defendant had been using Campbell's van and that the van had a bed pallet in the back that Campbell had made to be transported from back surgery. Campbell testified that, at 8:30 a.m. on February 14th, he sent someone out to wake up the Defendant, who was sleeping in the van parked in Campbell's driveway, so the Defendant would not be late leaving town for work. Campbell said that, when the two talked that morning, the Defendant gave no indication that anything unusual had happened the night before. On cross-examination, Campbell agreed that the Defendant never asked him to clean the van or remove anything from the van. Further, the Defendant never asked him to clean a jack and, as far as he knew, the jack was still in its place in the van. Campbell said that, the next time he used the van, it did not appear to have been cleaned or hosed down.

Chad Grindstaff, an officer with the Carter County Sheriff's Department, testified that he took the Defendant to the hospital to get the Defendant's blood drawn, and he watched that procedure be performed. He then brought the blood to Investigator Audrey Covington. Thomas Skeans testified that he works for the Sheriff's Department, and he brought the Defendant's van to the crime laboratory at the Tennessee Bureau of Investigation ("TBI").

Audrey Covington, an investigator with the Carter County Sheriff's Department, testified that she was the lead investigator in this case and recalled that she prepared a report relating to this case on March 18, 2003, which stated that there were no defensive wounds present on the victim's body. However, she further explained that the reason for this inconsistency with the autopsy was that Dr. Stephens had not yet finished the autopsy. Officer Covington's later discussions with Dr. Stephens clarified the mistake in Officer Covington's report.

Donna C. Nelson, a special agent forensic scientist assigned to the serology/DNA unit of the TBI, testified that she conducted a DNA test on material found in the victim's vagina and found the Defendant's sperm present. Agent Nelson said that the probability of an unrelated individual having the same exact DNA profile exceeded the current world population. On cross-examination, the agent said that she also tested clippings from the victim's fingernails, but she was unable to get a complete DNA profile.

Bradley Everett, a special agent forensic scientist with the TBI, testified that he performed serology and DNA testing on human blood that he found in the van involved in this case. Agent Everett stated that he found human blood on and inside of the van's hatchback as well as on the van's jack. In addition, there was blood on a comforter and a blue blanket in the rear of the van, next to the hatchback. The blood on the van's hatchback, the jack, and the blue blanket matched the victim's DNA profile. The blood on the comforter matched an unknown male, not the Defendant. Again, the probability that an unrelated individual having these same DNA profiles exceeded the current world population.

Richard Bowling testified that he is responsible for maintaining work records for Precipitator Service Group, the company where the Defendant worked in February of 2003. He said that the Defendant's work records indicated that he was off from February 9th until the 13th. Further, the Defendant left the morning of February 14th to go to Kentucky, and he was gone in Kentucky for work from February 14th until February 28th, and he was not off again until March 9th.

Patricia DeJoode testified that the Defendant is married to her cousin, and she had been to the Blue Hole area with the Defendant. She said that she, her husband, the Defendant, and friends used to all "hang out" there. DeJoode said that the Defendant went to Nashville Sound on several occasions with her husband.

Investigator Covington was recalled, and she said that she participated in videotaping the area around the crime scene, which videotape was played for the jury and which she described. The videotape showed the turn off to the Blue Hole area, the trail to the creek, and the drop off from the end of the trail to the creek bed. The investigator said that she took the victim's picture to the Nashville Sound to see if anyone might know her and have any pertinent information. She also checked the weather records and determined that the low temperature on February 13, 2003, was twenty degrees.

Investigator Covington also conducted a videotaped interview with the Defendant, which was played for the jury. In a hearing outside the presence of the jury, the parties agreed that there was a portion of the videotape in which the investigator and the Defendant discussed his failure to pay child support and a resulting warrant. They further agreed that this was inadmissible, and the State told the trial court that it would start the videotape after this portion of the conversation was concluded. The State then played the tape, and it played a portion discussing the child support. The trial court instructed the jury that, "[C]hild support's got nothing to do with this case, absolutely nothing . . . . You're to completely disregard that."

During the remainder of the interview, Investigator Covington told the Defendant that she had pulled tapes from the video surveillance from the Nashville Sound, and she asked the Defendant if he had ever been there. The Defendant said that he had been there "maybe twice" and most recently sometime in February, but he thought it was before the 6th of February. He said that he met a young girl at the club, she propositioned him, and he gave her $50.00 in exchange for sex. Investigator Covington showed the Defendant a picture of the victim, and the Defendant said that it "could be" the woman he had sex with, but he was unsure. The Defendant said that the two went to the parking lot and had sex in her vehicle, which was a Ford or Chevrolet conversion van. The Defendant said that the van had a bed area in the back with some pillows and a sheet across a mattress and that they went to that area, and, there, she performed oral sex on him, and then they had vaginal sex. The Defendant told Investigator Covington that he then got into the car that he was driving, his brother's girlfriend's Maxima, and left and went back to his brother's house. After thinking about it further, he said that he was driving his brother's van. He said that the woman was in her van when he left, and he did not see if she went back into the bar.

Investigator Covington asked the Defendant if he knew why she was asking him all of these questions, and he said, "No, is she saying that I molested her or something?" The Defendant agreed to provide a DNA sample. The Defendant asked what this was about, and the investigator said that something pretty bad had happened to the victim. The Defendant explained that he may not remember the victim's picture because he had consumed a couple of beers and a couple of shots of tequila. He agreed, but he did not know, that the woman approached him at around 11:15 or 11:20 p.m. He agreed that, at around 11:30 p.m., the victim started performing oral sex on him and, later, he got dressed. The Defendant figured that she probably wanted to buy some drugs. He said that he left immediately, and estimated that it was about 12:00 a.m. or 12:30 a.m. and said that he drove around before going to his brother's house. The Defendant did not know what time he got home, but he thought that maybe it was 1:00 or 2:00 a.m.

When told that the police were investigating the death of the woman in the picture, the Defendant said, "The death?" He asked if they thought that the woman in the picture was the same as the one that he had been with. The Defendant said that the woman that he was with did not seem too intoxicated.

Jeff Kelly, an Assistant Public Defender, testified that he assisted in investigating this case and, as part of that investigation, he visited the Blue Hole area, where the victim's body was found. He stated that he collected two jagged rocks as evidence, and he described them as having edges that were "fairly straight and jagged, fairly sharp." He said these rocks were typical of the rocks where the body was discovered. On cross-examination, Assistant Public Defender Kelly said that there was a fifteen foot drop off from the bank to the stream, and he found the rocks about a foot or two from the trees near the path.

The Defendant testified that he has previously been convicted of two counts of misdemeanor theft and one count of kidnapping. He stated that, on February 13, 2003, he borrowed his brother's

van, and he was scheduled to go to Carolton, Kentucky, the next day for work. The Defendant said that he left his brother's house at around 11:00 p.m., and he went to the apartment of a woman named McNabb, whom he had been dating. He said that she did not answer the door, so he went to the Nashville Sound to find her. The Defendant said he had never met the victim prior to arriving at the club, and, while he was drinking his third beer of the evening, the victim approached him and started a conversation. The Defendant testified that the victim asked him if he was at the club with anyone, to which he responded "no," and then she asked him if he would like some female company. The Defendant responded that he needed to think about her proposition and offered to buy her a drink. The victim agreed and requested a triple Crown Royal. The Defendant said that the bartender poured three shots of Crown Royal and gave him a glass to combine them, and the Defendant ordered another beer and a shot of tequila for himself. He recalled that the victim "chugged [the triple Crown Royal] in about three big swallows" immediately upon receiving the drink, and he thought that was "strange."

The victim asked the Defendant if he wanted some female company, again, and he asked how much it would cost. The victim indicated that it would cost $50.00. The Defendant told the victim that the price was steep, and she said that she would make it worth his while. The Defendant then agreed to the price, and the two left the club together. The Defendant said that the victim spoke with someone as they were leaving, and she told him to "[g]o right ahead" she would be right there. When they got to the Defendant's brother's van, the Defendant gave the victim $50.00, and the victim asked the Defendant if he wanted oral or vaginal sex. The victim folded the money, put it in her pocket, and the Defendant requested oral sex, which she performed on him while the van was still situated in the Nashville Sound parking lot.

At this point, the Defendant asked the victim if she used drugs, and she responded that she did. The Defendant then asked the victim if she could get some crack cocaine. The victim said that she could, and they drove to a club called "The Black and Tan," in downtown Johnson City. The Defendant gave the victim $150.00 to procure the crack, and the victim entered the club, bought the crack, and returned with seven pieces of the drug. The two proceeded to get high in The Black and Tan's parking lot using a crack pipe that the Defendant had in the van.

The Defendant then told the victim that he had to go to Elizabethton, in Carter County, to purchase marijuana, and he asked if she wanted to ride with him. She agreed, and, on the way to Elizabethton, the victim continued to smoke crack. The man the Defendant intended to buy marijuana from and man who lived on a mountain road; however, he was not available, so the Defendant asked the victim if she would like to drive up the mountain and get high. They arrived at Panhandle Road around 1:00 or 1:30 a.m., parked the van, and smoked some more crack. They continued to smoke crack and talk for twenty to thirty more minutes, and then the Defendant drank some whiskey. He offered the victim whiskey, but she declined.

According to the Defendant, at this point, the victim asked if the Defendant would like to trade some of his crack for a sexual favor. The Defendant agreed to exchange some crack for vaginal intercourse. The victim said that she needed to use the bathroom prior to engaging in intercourse,

and he estimated that this was at approximately 2:00 a.m. The Defendant testified that, while the victim was outside using the bathroom, she had fallen on the ice and scraped the side of her face. The Defendant said that when he saw her face he went into "almost a state of panic," and he asked her if she needed to go to the hospital. The victim stated that she did not want to go to the hospital because she was not hurt too badly and because if she went to the hospital, and cocaine was discovered in her blood, they would both be sent to jail. The Defendant recalled that the victim was dripping blood inside the van, and the Defendant got out a T-shirt to staunch the flow of blood. The Defendant asked the victim if she still wanted to get high and if she still wanted to trade sex for some crack. She said that she did and proceeded to undress on a mattress in the back of the van. After having intercourse, the Defendant and the victim smoked some more crack. The Defendant estimated that it was 3:15 or 3:30 a.m.

After getting high, the Defendant asked the victim if he could take her down to the creek that they were parked beside to wet a T-shirt and clean her face. The Defendant stated that he walked the victim toward the creek because she said that her shoes were slick, and she could not make it alone. They stopped at the edge of the of a drop-off above the creek, because there was snow and ice on the ground and the Defendant did not think he could get down to the creek without getting his boots wet. He explained that he was wearing a brand new pair of Red Wing boots that he paid $250.00 for, and he did not want to get them wet prior to going to work. He said that he told the victim to wait where she was while he changed his shoes. The Defendant stated that, once back at the van, he changed his boots and had a drink of whiskey. He estimated that, from the time he left the victim to the time he returned to the spot where he had left the victim, eight to ten minutes had elapsed.

The Defendant testified that when he returned the victim was gone, and he spotted her lying face-down in the creek bed below. He went down to help her, but he said that she was not breathing and was not responsive. The Defendant stated that he was in the water trying to revive her for twenty to thirty minutes, and initially, when he left, he intended on seeking help. However, he did not seek help because he was afraid he would go to jail due to an outstanding warrant for failure to pay child support.

The Defendant testified that he did not know how blood got on the jack. He said that he and the victim were "rolling around and kicking" while having sex, and they could have knocked the cover off of the panel where the jack was located, allowing blood from the victim's facial wounds to get on the jack. The Defendant testified that, maybe, the victim touched the jack after she touched her face. He said that he did not tell Investigator Covington what had happened because he did not think that she would believe him. The Defendant said that he had a previous injury that made it impossible for him to close his right hand, and he was right-handed.

On cross-examination, the Defendant said that he lied to Investigator Covington because he suspected that she had DNA evidence linking him to the victim. He said that he initially lied about what car he was driving because he did not want to implicate his family. He agreed that he still implicated his brother's girlfriend when he lied. The Defendant said that he never touched the jack

and that the jack never hit the victim. He denied having any knowledge of the fact that The Black and Tan closed in July of 2001, and he reiterated that he believed the bar was where the victim purchased crack cocaine on the night of February 13, 2003. The Defendant did not know why the two twenty dollar bills and the ten dollar bill he gave the victim in exchange for oral sex were not in her pockets when her body was discovered, but he speculated that the creek washed the money away. When asked why the victim did not put on her coat to go outside and clean the blood off of her face, the Defendant responded that, in spite of the fact that there was a blanket of snow on the ground and that it was only twenty degrees outside, smoking crack cocaine makes you break out in a sweat. When asked why he did not clean the victim's face at one of the many service stations down the road to avoid the icy ground where the victim had previously fallen, he said that the cocaine and alcohol had clouded his judgment. When asked why they attempted to hike through the snow and ice covered rocks to the creek for water instead of simply using some of the snow on the ground outside the van to clean the victim's face, he indicated that he had not thought of this approach.

II. Analysis

The Defendant now appeals, contending that: (1) insufficient evidence was presented to support his conviction; (2) the prosecutor engaged in misconduct; (3) the trial court's failure to accompany the jury to the crime scene prejudiced him; (4) the State was improperly allowed to impeach him with a prior kidnapping conviction; and (5) he is entitled to a new trial due to the cumulative effect of the trial court's errors.

A. Sufficiency of the Evidence

The Defendant alleges that there is insufficient evidence in the record to support his conviction for first degree murder. Specifically, the Defendant challenges whether the State's evidence was sufficient to establish premeditation. Further, he contends that the evidence convicting him was circumstantial and insufficient for a jury to find him guilty beyond a reasonable doubt. The State counters that premeditation could be inferred from the Defendant's use of a deadly weapon upon an unarmed victim, his attempt to conceal the crime, the cruelty of the crime, the repeated blows inflicted upon the victim, and the Defendant's calm demeanor after the killing. Further, the State contends that the circumstantial evidence was sufficient to support the conviction.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Goodwin, 143 S.W.3d 771, 775 (Tenn. 2004) (citing State v. Reid, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Pendergrass,13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). "[B]efore an accused can be convicted of a criminal offense based on circumstantial evidence alone, the facts and circumstances 'must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the

defendant . . . .'" State v. Raines, 882 S.W.2d 376, 380 (Tenn. Crim. App. 1994) (quoting State v. Crawford, 470 S.W.2d 610, 612 (Tenn. 1971)). "In other words, '[a] web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt.'" Id. (quoting Crawford, 470 S.W.2d at 613).

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. State v. Buggs, 995 S.W.2d 102, 105 (Tenn. 1999); Liakas v. State, 286 S.W.2d 856, 859 (Tenn. 1956). Questions concerning the credibility of the witnesses, the weight and value of the evidence, and all factual issues raised by the evidence are resolved by the trier of fact. Liakas, 286 S.W.2d at 859. "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our Supreme Court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (1966) (citing Caroll v. State, 370 S.W.2d 523, 527 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. Goodwin, 143 S.W.3d at 775 (citing State v. Smith, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. Id.; see State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000).

The offense of first degree murder includes a "premeditated and intentional killing of another." Tenn. Code Ann. § 39-13-202(a)(1) (2003). A premeditated act is "an act done after the exercise of reflection and judgment" and means that, "the intent to kill must have been formed prior to the act itself." Id. at § 39-13-202(d). An intentional act refers to "the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result[.]" Tenn. Code Ann. § 39-11-106(a)(18) (2003). The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation. Tenn. Code Ann. § 39-13-202(d).

The element of premeditation is a question of fact to be resolved by the jury and may be established by proof of the circumstances surrounding the killing. State v. Suttles, 30 S.W.3d 252, 261 (Tenn. 2000). Because the trier of fact cannot speculate as to what was in the defendant's mind, the existence of facts of premeditation must be determined from the defendant's conduct in light of the surrounding circumstances. Although there is no strict standard governing what constitutes proof of premeditation, our Supreme Court has previously identified the following circumstances as supporting a finding of premeditation: the use of a deadly weapon upon an unarmed victim; the particular cruelty of a killing; the defendant's threats or declarations of intent to kill; the defendant's procurement of a weapon; any preparations to conceal the crime undertaken before the crime is committed; destruction or secretion of evidence of the killing; and a defendant's calmness after a killing. State v. Leach, 148 S.W.3d 42, 53-54 (Tenn. 2004) (citing State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1987)). Moreover, evidence of repeated blows is relevant to establish premeditation, although this evidence alone is not sufficient to establish premeditation. State v. Sims, 45 S.W.3d 1, 8 (Tenn. 2001). Additionally, it should be observed that these factors are not exhaustive. State v. Davidson, 121 S.W.3d 600, 615 (Tenn. 2003).

We conclude that the evidence, when examined in the light most favorable to the State, was sufficient to support a finding of premeditation. Dr. Stephens testified that a minimum of twenty of the victim's injuries were consistent with being struck with an object while the victim was in a defensive posture. It was the doctor's opinion that the scissors jack, found in the van driven by the Defendant, had several qualities that made it consistent with the object used to inflict the victim's injuries. Agent Everett testified that human blood matching the victim's DNA profile was found on the scissors jack as well as in the van driven by the Defendant. Based on the blood on the scissors jack and the victim's wounds being consistent with wounds inflicted with a jack, a reasonable jury could have concluded that a deadly weapon was used against the victim. The testimony that the victim was in a defensive posture while these wounds were being delivered would provide sufficient evidence for the jury to infer that the victim was unarmed.

Further proof of premeditation comes from the nature of the beating suffered by the victim. There were approximately twenty to forty-six blows to the victim's head, torso, arms, and legs, according to Dr. Stephens. As a result of these wounds, the victim's brain swelled, inducing vomiting, and the victim swallowed the vomit, instead of expelling it, due to her incapacitation. Dr. Stephens estimated that the victim survived her injuries for a period of between ten minutes and two hours. A reasonable juror could have surmised that the victim's murder was effectuated with particular cruelty.

Several other factors that may be used to impute premeditation were present to a sufficient extent to allow the jury to find the Defendant guilty of premeditated first degree murder, including: the Defendant's calm demeanor on the morning after the killing, approximately five hours after the victim's death; the repeated blows inflicted upon the victim; and the Defendant's preparations to conceal the crime, which were evidenced by the Defendant driving the victim several miles into the mountains, to a remote location in the middle of the night prior to killing her, not telling police of her death, and lying to police when they questioned him about the murder. Based on these factors,

a reasonable jury could have found the Defendant guilty of premeditated first degree murder, and the Defendant is not entitled to relief on this issue.

With regard to the Defendant's contention that the circumstantial evidence against him was insufficient because it was not so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant, we disagree. The evidence presented, viewed in the light most favorable to the State, proved that the Defendant went to Nashville Sound and met the victim. After the two engaged in sexual relations, he asked her to buy crack cocaine for him. The two went on a drive, stopped in a parking lot near the Blue Hole area, and continued to smoke crack cocaine and again engage in sexual relations. Defendant brought the victim to the area near the stream. The victim's blood was found in the van on a blanket, on the hatchback, and on a scissors jack that the doctor testified was consistent with the shape of the weapon that caused the victim's injuries. The Defendant told police that he last saw the victim when he left her van parked in the Nashville Sound parking lot. While the Defendant alleged that the victim accidentally fell off of the bank, the jury squarely rejected that contention, which is within its providence to do. We conclude that the evidence, while circumstantial, is sufficient to support the jury's finding. The Defendant is not entitled to relief on this issue.

B. Prosecutorial Misconduct

The Defendant next asserts that the State engaged in misconduct when it failed to redact portions of a videotape that made reference to the Defendant's failure to pay child support and also when the State made reference to The Black and Tan club during closing arguments. The State contends that the trial court's curative instructions were sufficient to negate any prejudice that the Defendant may have sustained do to these errors.

When an appellate court finds an argument improper, "the established test for determining whether there is reversible error is whether the conduct was so improper or the argument so inflammatory that it affected the verdict to the Appellant's detriment." State v. Goltz, 111 S.W.3d 1, 5 (Tenn. Crim. App. 2003) (citing Harrington v. State, 215 Tenn. 338, 385 S.W.2d 758, 759 (1965)). In measuring the prejudicial impact of an improper argument, this Court should consider the following factors: "(1) the facts and circumstances of the case; (2) any curative measures undertaken by the court and the prosecutor; (3) the intent of the prosecution; (4) the cumulative effect of the improper conduct and any other errors in the record; and (5) the relative strength or weakness of the case." Goltz, 111 S.W.3d at 5-6 (citing Judge v. State, 539 S.W.2d 340, 344 (Tenn. Crim. App. 1976)); see State v. Buck, 670 S.W.2d 600, 609 (Tenn. 1984).

During the State's presentation of evidence, a videotaped interview with the Defendant was played in which the State did not properly redact portions of the interview where mention is made of the Defendant's failure to pay child support. The Defendant objected, and the trial court gave the following curative instruction:

> Members of the jury, child support's got nothing to do with this case, absolutely nothing. [The Defendant's] objection is sustained. You're to completely disregard that. It just has absolutely nothing to do with this case . . . . Any member of the jury who cannot follow that instruction and disregard what you just heard [']cause it's not relevant?

At this point, the presentation of evidence resumed. Shortly thereafter, a second reference to the Defendant's failure to stay current on his child support payments was heard on the videotape. Again, the Defendant objected, and again, the trial court gave a limiting instruction: "Members of the jury, we're not trying a child support case. Child support's got nothing to do with this case. You're instructed to disregard any - - any statement regarding child support. Objection . . . sustained."

After a thorough review of the record, we believe that the references to the Defendant's failure to pay child support were not so improper or inflammatory that they affected the verdict to the Defendant's detriment. The curative instructions given by the trial court were both thorough and clear. This Court presumes that juries follow the instructions of the trial court unless the record presents proof to the contrary. State v. Butler, 880 S.W.2d 395, 399 (Tenn. Crim. App. 1994). Furthermore, there is nothing to suggest that the State intended to present the evidence of the Defendant's failure to pay child support to the jury, rather, it appears that the evidence was presented as the result of the State's negligent editing of the tape containing the Defendant's police interrogation. The cumulative effect of the errors appears to be minimal. The Defendant was on trial for first degree murder, and the improper evidence concerned delinquent child support payments. The vastly different nature of the two allegations in question renders it highly unlikely that a reasonable juror would have made the assumption that because the Defendant may have failed to make child support payments in the past, he was guilty of first degree murder. Moreover, in light of the strength of the State's case, we conclude that the Defendant suffered no prejudice due to the improperly presented evidence. As discussed previously, the record contains sufficient evidence from which the jury could have concluded that the Defendant acted with premeditation when he killed the victim, and we believe that the evidence that he may have previously failed to make child support payments would not have made this conclusion any more likely. Thus, the Defendant suffered no prejudice.

The other of comments objected to by the Defendant were made in reference to the closing of the Black and Tan club. During closing arguments, the State said, "the Black and Tan [was] not open when he said it was open, it [was] closed in July, 2001 . . . ." The Defendant objected, and the trial court sustained his objection, giving the following curative instruction:

> Members of the jury, there's no proof in this record, other than the question asked by the District Attorney, as to when that particular club closed. A question is a question, not a statement of fact, and you're to disregard that statement of fact that was made by the District Attorney in the question and disregard this part of the argument.

The next reference made to the Black and Tan was a rhetorical question posed to the jury: "Ask yourself this. Do you think that the State of Tennessee had the time to go out and round up witnesses and get them over here to testify about the Black and Tan [c]lub in the few minutes we had?" Once again, the Defendant objected, and, again, the trial court sustained the objection, stating: "Members of the jury, there is no proof in this case as to whether that club . . . was open [or] . . . closed. And the District Attorney was improper by arguing anything about that, so you're to disregard it again."

The Defendant essentially argues that the comments regarding the Black and Tan club are prejudicial because they create an artificial inconsistency in his story, which includes a trip to the Black and Tan to purchase crack. However, we note that the Defendant never claimed to have gone into the Black and Tan himself, and, instead, he maintained that he simply gave cash to the victim who procured the drugs. The Defendant's testimony regarding the Black and Tan Club is as follows:

> [Defense Counsel] Okay. What is Black and Tan?
> [Defendant] It's another bar. It's a black bar as far as I know. I've never been inside it.
> [Defense Counsel] Okay.
> [Defendant] When we got there, [the victim] told me where to park in the parking lot, and it was about fifty (50) or sixty (60) feet from the building. I just pulled off of the road up into the parking lot, and she said, "This is good right here." She asked me how much [crack] I wanted . . . . I gave her a hundred and fifty dollars ($150.00) and told her to get what she could with that. And she got out of the vehicle and went in [t]he Black and Tan.

Based on the preceding colloquy, it is clear that the Defendant never asserted an intimate familiarity with The Black and Tan, and, in fact, the Defendant was unable to name the street that the club was on, only asserting that it was "somewhere in the . . . vicinity of the Johnson City Press." In light of the Defendant's lack of familiarity with the area, the drinking he was engaged in, and the fact that he was smoking crack in the club's parking lot, a reasonable jury could have concluded that the Defendant was either confused as to his whereabouts or was unaware that the club had changed ownership.[1] We cannot speculate as to which conclusion the jury drew from the Defendant's testimony and the State's improper references to the closing of the club.

After reviewing the record we believe that the references to the closing of the Black and Tan were not so improper or inflammatory that they affected the verdict to the Defendant's detriment. The curative instructions given by the trial court were unequivocal. Again, this Court presumes that juries follow the instructions of the trial court unless the record presents proof to the contrary. Id.

[1] We note that the record does not indicate whether the Black and Tan was in fact closed in February of 2003. Additionally, the record is devoid of any information regarding whether another business was occupying the premises once serving as the Black and Tan at the time of the victim's murder.

Although the intent of the prosecutor is unclear, the cumulative effect of these errors is insignificant in light of the strength of the State's case, and, as such, the Defendant is not entitled to relief on this issue.

C. Trial Court's Absence from the "Jury View"

After deliberations in this case began, the jury requested to view the crime scene. The trial judge granted the request, but he was unavailable to accompany the jury because he had previously committed to serve as a pallbearer in a funeral. The Defendant asserts that the trial court's failure to accompany the jury to the crime scene prejudiced him. Specifically, the Defendant maintains that, by not accompanying the jurors to the crime scene, the trial court failed to fulfill its role as the thirteenth juror. The State counters that the Defendant agreed to the viewing and was not prejudiced by the trial court's absence.

"The object of the jury in viewing the scene is to make clear the situation as to which they are uncertain or confused, and the information thus obtained certainly constitutes evidence." Watson v. State, 61 S.W.2d 476, 477 (Tenn. 1933). Moreover, while the accused has a constitutional right to be present during the jury view, see id., there is no such right compelling the trial court to be present during the jury view, see State v. Shaw, 619 S.W.2d 546, 549 (Tenn. Crim. App. 1981).

In this case, the trial court did not accompany the jury to the crime scene. "It is always the safer and better course for the [trial court] to be present at the view." Shaw, 619 S.W.2d at 549. In any event, under the facts of this case, if the jury's view outside of the presence of the trial court did constitute error, it was harmless at most. See Tenn. R. App. P. 36(b). The view neither added to nor subtracted from the proof the State had already introduced. Numerous photographs of the crime scene were introduced as evidence, the jury watched a video depicting the location, and both Assistant Public Defender Kelly and the Defendant testified as to the topography of the area in question. Additionally, the trial court indicated that it was familiar with the area in question and stated, "[T]he record is clear that what the jury saw in person is what they had seen on the videotape . . . . The court is of the opinion that I personally was able to exercise judgment and make a decision as thirteenth juror without going with the jury to view the area where [the victim] was murdered." In light of these factors, and the absence of any prejudice suffered by the Defendant, the Defendant is not entitled to relief on this issue.

D. Impeachment

The Defendant also contends that the State was improperly allowed to impeach him with a prior kidnapping conviction. It is the Defendant's position that the probative value of the kidnapping conviction is outweighed by the unfair prejudicial effect of the conviction.

As a preliminary matter, we note that the admissibility of evidence is a question generally within the trial court's discretion. State v. McLead, 937 S.W.2d 867, 871 (Tenn. 1996). "When arriving at a determination to admit or exclude even that evidence which is considered relevant trial

courts are generally accorded a wide degree of latitude and will only be overturned on appeal where there is a showing of abuse of discretion." Id. A trial court's ruling under Tennessee Rule of Evidence 609 will not be reversed absent an abuse of discretion. Johnson v. State, 596 S.W.2d 97, 104 (Tenn. Crim. App. 1979). A trial court abuses its discretion in this regard only when it "'applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.'" State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999) (quoting State v. Shuck, 953 S.W.2d 662, 669 (Tenn. 1997)).

Pursuant to Rule 609, Tennessee Rules of Evidence, the credibility of the defendant may be attacked by presenting evidence of prior convictions if certain conditions are met. First, the State must give reasonable pretrial notice of the impeaching convictions. Tenn. R. Evid. 609(a)(3). Second, the convictions must be punishable by death or imprisonment over one year or must involve a crime of dishonesty or a false statement. Tenn. R. Evid. 609(a)(2). Third, less than ten years must have elapsed between the defendant's release from confinement on the prior conviction and the commencement of the instant prosecution. Tenn. R. Evid. 609(b). Finally, the impeaching conviction's probative value on credibility must outweigh its unfair prejudice. Tenn. R. Evid. 609(a)(3).

In determining whether the probative value of a prior conviction on the issue of credibility outweighs its unfair prejudicial effect on the substantive issues, a trial court should consider the similarity between the crime in question and the underlying impeaching conviction, as well as the relevance of the impeaching conviction with respect to credibility. State v. Waller, 118 S.W.3d 368, 371 (Tenn. 2003). The fact that a prior conviction involves the same or similar crime for which the defendant is being tried does not automatically require its exclusion. State v. Baker, 956 S.W.2d 8, 15 (Tenn. Crim. App. 1997); State v. Miller, 737 S.W.2d 556, 560 (Tenn. Crim. App. 1987). However, if "the prior conviction and instant offense are similar in nature the possible prejudicial effect increases greatly and should be more carefully scrutinized." Long v. State, 607 S.W.2d 482, 486 (Tenn. Crim. App. 1980). A trial court should first analyze whether the impeaching conviction is relevant to the issue of credibility. Waller, 118 S.W.3d at 371. Rule 609 of the Tennessee Rules of Evidence suggests that the commission of any felony is "generally probative" of a criminal defendant's credibility. Id. However, the Tennessee Supreme Court has rejected a per se rule that permits impeachment by any and all felony convictions. State v. Mixon, 983 S.W.2d 661, 674 (Tenn. 1999). A prior felony conviction still must be analyzed to determine whether it is sufficiently probative of credibility to outweigh any unfair prejudicial effect it may have on the substantive issues of the case. Waller, 118 S.W.3d at 371. To determine how probative a felony conviction is to the issue of credibility, the trial court must assess whether the felony offense involves dishonesty or a false statement. Id.

In determining that the probative value of the Defendant's kidnapping conviction outweighed the prejudicial effect, the trial court stated:

> [The Defendant is] released from prison in North Carolina for kidnapping [in] '96. That's within the ten (10) year period . . . . [T]hat is not a case that involves

> dishonesty or is not a conviction that involves dishonesty or false statement, but the law is that the commission of a felony is considered to be generally probative of a defendant's criminal nature from which a jury can infer a propensity for false testimony . . . . It's a serious crime . . . . He received a twelve (12) year penitentiary sentence. And it is a distinctive deviation from the norms of society and what a decent, and in that regard, an honest person would do that the court finds that it does - - it does have a fair amount of probative value for issues of credibility. The second thing to do is to determine the unfair prejudicial effect on the substantive issues in this case. In this case there is no proof that the victim was confined, was carried away or that there's any similarity between a kidnapping and the events that occurred. He's not charged with kidnapping. And it appears to the court then that there is no prejudicial effect on substantive issues. It does have probative value.

As stated previously, when determining whether to admit or exclude evidence trial courts are generally accorded a wide degree of latitude and will only be overturned on appeal where there is a showing of abuse of discretion. Otis, 850 S.W.2d at 442. The record reflects that the trial court adhered to the criteria set forth in Tennessee Rule of Evidence 609. First, the State did in fact give reasonable pretrial notice of the impeaching convictions. Second, the conviction used was punishable by more than one year in prison. Third, less than ten years had elapsed between the Defendant's release from confinement on the prior conviction and the commencement of the instant prosecution. Fourth, as outlined by the trial court, the impeaching conviction's probative value on credibility outweighed its unfair prejudice.

We note that the Defendant asserts that the State intimated that the victim may have been abducted and brought to the Blue Hole against her will. Specifically, the Defendant takes issue with the following comment, made by the State during closing arguments, "[The Defendant] wants you to believe that he took [the victim] up there agreeably." While the State's intention is not readily apparent, it is not clear that the State intended to suggest a kidnapping may have taken place. Based on the arguments that immediately followed this comment, reasonable minds could differ on what the State intended to suggest. Additionally, this isolated comment, regardless of intention, is insufficient to establish that the State intended to prove that a kidnapping took place. The Defendant is not entitled to relief on this issue.

E. Cumulative Effect of the Errors

Finally, the Defendant asserts that he is entitled to a new trial due to the cumulative effect of the errors made by the trial court. We recognize that while individual errors may not require relief, the combination of multiple errors may necessitate the reversal of a conviction. See State v. Zimmerman, 823 S.W.2d 220, 228 (Tenn. Crim. App. 1991). As we have discussed above, we believe that the Defendant is not entitled to relief on any of the issues raised on appeal. Further, we conclude that the Defendant is not entitled to a new trial based upon his allegations of cumulative error.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we conclude that there exists no reversible error in the judgment of the trial court. Therefore, the trial court's judgment is affirmed.

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ROBERT W. WEDEMEYER, JUDGE